

0039-7495-2SRD



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IN THE UNITED STATES PATENT & TRADEMARK OFFICE

IN RE APPLICATION OF: :
Isao MIHARA, et al : EXAMINER: BHATNAGAR, A.P.
SERIAL NO.: 09/471,497 :
FILED: DECEMBER 23, 1999 : GROUP ART UNIT: 2623
FOR: IMAGE RECOGNITION METHOD AND APPARATUS

PROVISIONAL ELECTION

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ASSISTANT COMMISSIONER FOR PATENTS
WASHINGTON, D.C. 20231

Technology Center 2600

SIR:

In response to the Election of Species Requirement dated December 12, 2002,
Applicants provisionally elects with traverse the species corresponding to Figure 1 and
identify Claims 1, 4, 7, 9, 16, 23 and 27 as readable on the provisionally elected species.

Applicant respectfully traverses the election requirement for several reasons.

First, the outstanding Official Action merely includes the conclusory statement that
“This application contains claims directed to ... patentably distinct species” without stating
any basis whatsoever in support of such a finding. This is contrary to MPEP §816, which
states:

MPEP §816

The particular reasons relied on by the examiner for
holding the inventions as claimed are either independent or
distinct should be concisely stated. A mere statement of
conclusion is inadequate. The reasons upon which the
conclusion is based should be given....

In the absence of any annunciated basis, it is respectfully submitted that the PTO clearly has not carried forward its burden of proof to establish distinctness.

Secondly, MPEP § 806.04(f) requires:

MPEP § 806.04(f)

Claims to be restricted to different species must be mutually exclusive....

The outstanding Official Action fails to address in any way whether the pending claims recite mutually exclusive characteristics and this failure provides a further basis for traversing the election requirement.

Finally, MPEP § 803 states:

MPEP § 803

If the search and examination of an entire application can be made without serious burden, the Examiner must examine it on the merits, even though it includes claims to distinct or independent inventions.

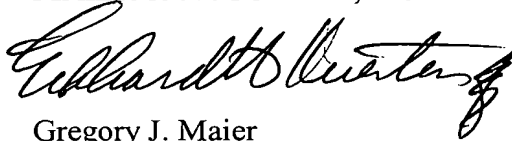
The claims of the present invention would appear to be part of an overlapping search area. Accordingly, Applicant also respectfully traverses the outstanding restriction requirement on the grounds that a search and examination of the entire application would not place a *serious* burden on the Examiner.

In this particular case, since Applicant is at a loss as to the basis of the election requirement, in view of the fact that the requirement does not state any analysis on how the species were decided, Applicant respectfully requests that the requirement be withdrawn, or at the very least, that a new Official Action be mailed stating the basis for the election

requirement and remedying the deficiencies above-noted, so that Applicant can then appropriately respond on the merits of the requirement.

Respectfully submitted,

OBLON, SPIVAK, McCLELLAND,
MAIER & NEUSTADT, P.C.



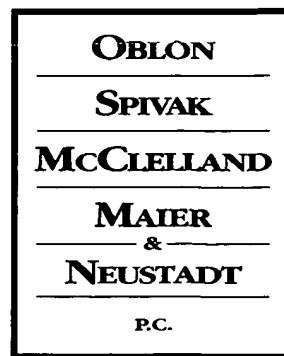
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Docket No.: 0039-7495-2SRD



ATTORNEYS AT LAW

ASSISTANT COMMISSIONER FOR PATENTS
WASHINGTON, D.C. 20231

RE: Application Serial No.: 09/471,497

Applicants: Isao MIHARA, et al

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Group Art Unit: 2623

Examiner: BHATNAGAR, A.P.

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SIR:

Attached hereto for filing are the following papers:

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Our check in the amount of \$0.00 is attached covering any required fees. In the event any variance exists between the amount enclosed and the Patent Office charges for filing the above-noted documents, including any fees required under 37 C.F.R. 1.136 for any necessary Extension of Time to make the filing of the attached documents timely, please charge or credit the difference to our Deposit Account No. 15-0030. Further, if these papers are not considered timely filed, then a petition is hereby made under 37 C.F.R. 1.136 for the necessary extension of time.

Respectfully submitted,

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